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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,710	07/21/2003	Joseph Maranto	W-3942	7575
7590	05/11/2005		EXAMINER	
WORREL & WORREL ST. CROIX PROFESSIONAL CENTER SUITE 121 2109 W. BULLARD AVE. FRESNO, CA 93711-1258			BELL, KENT L	
			ART UNIT	PAPER NUMBER
			1661	
			DATE MAILED: 05/11/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/624,710	MARANTO, JOSEPH
	<b>Examiner</b>	<b>Art Unit</b>
	Kent L. Bell	1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

*papers f: led 2/11/05 + 11/3/04*

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 7/21/03 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/21/03</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

**Detailed Action**

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

**Detailed Action**

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Applicant should insert --Plant-- after "Grapvine" in the Title.

B. Page 3, lines 1 and 2, Applicant should set forth in the specification which parental cultivar was the female cultivar and which was the male cultivar.

C. Page 4, lines 16-21, Applicant should set forth in the specification the age of the plant when described in the specified location of culture. It is noted in the Remarks section, page 2, filed November 3, 2004, that "information is not available to the applicant in sufficiently

**Detailed Action**

dependable form to amend the application in response to the Office Action.”. Applicant should know the age of the plant when described as the instant plant was part of a breeding program conducted by the inventor. As such the inventor “monitored and asexually reproduced” (as stated on page 3, lines 12-17) and obtained information regarding the instant plant’s characteristics including the fruit. It is therefor believed the information requested can be reasonably obtained.

D. Page 5, line 2, Applicant should set forth in the specification the typical and observed plant height and diameter as applicant has stated the instant plant appears as a bush. The recitation “Large” is vague and insufficient in this regard.

E. Page 5, line 6, Applicant should set forth in the specification the typical and observed trunk diameter a specified height above the ground. The recitation “slender” is vague and insufficient in this regard.

F. Page 5, line 9, Applicant should set forth in the specification the typical and observed cane length and width. The recitation “Medium” is vague and insufficient in this regard.

G. Page 5, lines 14 and 15, Applicant should set forth in the specification the typical and observed shoot diameter.

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H. Page 6, line 5, Applicant should set forth in the specification the typical and observed bud size. The recitation "Medium" is vague and insufficient in this regard.

I. Page 6, line 12, Applicant should set forth in the specification additional information relative to the instant plant's leaf including the typical and observed leaf width, shape, and apex and base descriptors.

J. Page 6, line 19, Applicant should set forth in the specification additional information relative to the instant plant's petiole including the typical and observed petiole diameter and coloration with reference to the employed color chart.

K. Page 7, line 6, Applicant should set forth in the specification additional information relative to the instant plant's inflorescence including the typical and observed flower depth and diameter.

L. Applicant should set forth in the specification information relative to the instant plant's petals and sepals including the typical and observed petal and sepal number per flower, shape,

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length, width, apex, base, and margin descriptors and coloration (both surfaces) with reference to the employed color chart.

M. Page 7, line 13, Applicant should set forth in the specification the typical and observed number of pistils per flower.

N. Page 7, line 14, Applicant should set forth in the specification at least a generic coloration for pollen.

O. Page 8, line 4, Applicant states "0.464" but does not state what this number represents. It is not understood whether this number represents a percentage or measurement or something else. Correction and/or clarification is necessary.

P. Page 8, line 11, Applicant should set forth in the specification the typical and observed cluster size. The recitation "Medium to large" is vague and insufficient in this regard.

Q. Page 9, lines 8-11, Applicant should set forth in the specification additional information relative to the instant plant's flesh including the typical and observed flesh coloration with reference to the employed color chart.

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R. Page 9, line 16, Applicant should set forth in the specification a USDA Hardiness zone as the recitations “Cold” and “heat” do not set forth a temperature in which the instant plant may survive and/or withstand.

S. The pages of the specification should be numbered consecutively.

T. Applicant should set forth --plant-- in The Claim (MPEP 1605, 37 CFR 1.164) as The Claim shall be in formal terms to the new and distinct variety of the specified “plant”.

The above listing may not be complete. Applicants should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

**Claim Rejection**

**35 U.S.C. 112, 1st & 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

**Detailed Action**

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached at (571) 272-0811.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL  
PRIMARY EXAMINER**

*Kent L. Bell*